

Quarterly Case Update

OECD Watch

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of OECD Guidelines cases filed by NGOs

I. Highlights in this Update

New cases:

- The ECCHR, Sherpa and UGF file a joint complaint against 4 cotton dealers from Germany, Switzerland and France for knowingly profiting from (forced) child labour in the Uzbek cotton industry. (p. 2)
- Justiça Ambiental (JA!) and a coalition of Mozambican NGOs file a complaint against BHP Billiton regarding its intention to operate its Mozal aluminum smelter under a 6 months bypass. (p. 2)
- The Saami Council files a complaint with the German NCP against Germany-based KfW IPEX-Bank for financing a large-scale wind farm on the Saami's traditional reindeer herding pastures; German NCP transfers the case to the Swedish NCP, which subsequently rejects it. (p. 2)
- OT Watch files a complaint with the UK, Canadian, and US NCPs against Ivanhoe Mines and Rio Tinto concerning water rights related to the companies' Oyu Tolgoi gold/copper mine in Mongolia. (p. 3)

Developments:

- Canadian NCP accepts case against Goldcorp Inc. and offers to host meetings between the parties, but the complainants urge the NCP to investigate the facts and determine whether a breach of the Guidelines has occurred. (p. 4)
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- German NCP rejects Greenpeace's complaint against Vattenfall AB and its German subsidiaries. (p. 5)
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II. Overview of pending and recently concluded/rejected cases

Case	Child labour in the Uzbek cotton trade		
Company/ies	Date filed	Status	Duration
Otto Stadtlander GmbH, Paul Reinhart AG, ECOM Agroindustrial Corp Ltd., Devcot S.A.	25 October 2010 25 October 2010 25 October 2010 25 October 2010	Filed Filed Filed Filed	1 month 1 month 1 month 1 month
Complainants	European Center for Constitutional and Human Rights (ECCHR), Association Sherpa, Uzbek-German Forum for Human Rights (UGF)		
National Contact Point(s) concerned	France, Germany, Switzerland		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 1, 2, 10; Chapter IV, paragraph 1b, 1c		

Issue

The ECCHR, Sherpa and UGF filed a joint complaint against 4 cotton dealers from Germany, Switzerland and France for knowingly profiting from (forced) child labour in the Uzbek cotton industry.

In Uzbekistan the use of child labour in the cotton harvest is a recognized problem. During the harvest season, schoolchildren are taken from classes and forced

to pick cotton under poor labour conditions. The complainants claim that the money earned through the cotton trade flows directly into the Uzbek state treasury, leaving the families of the affected children with very little profit from their hard work. The complainants argue that if companies have built up intensive trade relations with state-owned enterprises of the Uzbek regime they should be aware of the problem of child

labour in Uzbekistan and can thus be held accountable for their role in supporting and maintaining the system of forced child labour.

Developments/Outcome

The complaint was filed simultaneously at the French, German and Swiss NCPs. The German and Swiss NCPs acknowledged receipt of the complaint, but no initial assessment has yet been made.

Case	Concerns around BHP Billiton's Mozal bypass in Mozambique		
Company/ies	Date filed	Status	Duration
BHP Billiton	1 October 2010	Filed	1 month
Complainants	Justiça Ambiental, Livaningo, Liga Moçambicana dos Direitos Humanos, Centro Terra Viva, Kulima and Centro de Integridade Pública		
National Contact Point(s) concerned	United Kingdom (lead), Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 2, 5; Chapter III, paragraph 1; Chapter V, paragraph 1, 2		

Issue

Justiça Ambiental (JA!) and a coalition of Mozambican NGOs filed a complaint against BHP Billiton regarding its intention to operate its Mozal aluminum smelter under a bypass authorised by the Mozambican Ministry for Environmental Coordination.

The bypass would allow the smelter to operate without exhaust filters for a period of 6 months. The company claims the bypass is necessary to upgrade

the facility in order to comply with legally required standards.

The complainants are, however, concerned with the environmental implications and serious impacts on human health the bypass would involve. The complainants made several unsuccessful attempts to resolve the issue directly with the company. With the OECD Guidelines complaint the complainants hope to open an avenue for mediation and

discussing the issue with the company.

The bypass was supposed to go into effect on 1 November 2010, but a local court case has put it on hold.

Developments/Outcome

Both the Australian and UK NCPs have acknowledged receipt of the complaint and agreed that the UK NCP will take the lead in this complaint.

Case	Community rights and KfW IPEX-Bank's financing of Swedish wind farm		
Company/ies	Date filed	Status	Duration
KfW IPEX-Bank	16 April 2010	Rejected in June 2010	2 months
Complainants	Saami Council		
National Contact Point(s) concerned	Germany, Sweden		
Guidelines Chapter(s) & paragraph(s)	Chapter I and II		

Issue

The Saami Council filed a complaint against Germany-based KfW IPEX-Bank for

financing the world's largest land-based wind power park, Markbygden, where the Saami community of Ostra Kikkejaur

herd their reindeer during the winter.

The Swedish government has granted planning permission for Markbygden even though the community has not agreed to the massive project, which is slated to consist of over 1,000 wind turbines, an 800km road, and extensive surrounding infrastructure. According to the complaint, the project could threaten their traditional way of life and also result in forced relocations and a loss of cultural identity.

The complaint alleges that KfW IPEX-Bank's investment in the project is not consistent with the bank's commitment to human rights, indigenous peoples' rights, and environmental sustainability.

Developments/Outcome

The complaint was filed with the German NCP in April 2010. The following month, the complainants were informed by the Swedish NCP that it would handle the complaint despite the fact that the Swedish government

is partly sponsoring the project and has granted permission for the wind power park, which the complainants see as a conflict of interest.

In June 2010, the Swedish NCP informed the complainants their complaint did not merit being accepted as a specific instance. To date, requests by the Saami Council for a meeting with KfW IPEX-Bank have been declined.

Case	Water and sustainability issues at a planned mine in Mongolia		
Company/ies	Date filed	Status	Duration (to date)
Rio Tinto International Holdings Ltd. Ivanhoe Mines Ltd.	1 April 2010 1 April 2010	Filed Filed	7 months 7 months
Complainants	Oyu Tolgoi (OT) Watch, Center for Citizens' Alliance, Center for Human Rights and Development, Steps without Border, Drastic Change Movement and National Soyombo Movement.		
National Contact Point(s) concerned	Canada, United States, United Kingdom, Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 1; Chapter V, paragraph 3		

Issue

OT Watch and five other NGOs filed a complaint concerning Canada-based Ivanhoe Mines' and UK-based Rio Tinto's plans to exploit the Oyu Tolgoi open-pit, gold and copper mine in the South Gobi Region of Mongolia.

The complaint alleges the companies' Technical and Economic Feasibility Study that was accepted by Mongolia's Technical Council of Minerals Experts in March and implemented in April 2010 does not demonstrate the availability of sufficient water resources to carry out the project. It also raises issues concerning the long-

term commitment of Ivanhoe Mines to the region and proposed royalty transfers among owners of the mining license.

The complaint was filed with the UK and Canadian NCPs. An additional complaint was submitted to the US NCP because Ivanhoe Mines is listed on the New York and NASDAQ Stock Exchanges.

Developments/Outcome

The UK and Canadian NCPs agreed the Canadian NCP would take the lead, as Ivanhoe Mines appears to be the company most central in the complaint. The UK

NCP offered to assist by engaging Rio Tinto in the specific instance procedure if necessary.

After the US NCP acknowledged receipt of the complaint, it forwarded the case to the Australian, UK and Canadian NCPs citing the country of origin of the companies involved. The US NCP also stated it stands ready to assist in the case.

The Canadian NCP is conducting an initial assessment and has forwarded the complaint to Ivanhoe Mines and Rio Tinto, both of which have responded in writing.

Case	Fugro's failure to consult the Sahrawi people in Western Sahara		
Company/ies	Date filed	Status	Duration
Fugro Geoteam AS	28 February 2010	Pending	7 months
Complainants	Norwegian Support Committee for Western Sahara		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter II		

Issue

The Norwegian Support Committee for Western Sahara filed a complaint against Fugro Geoteam for failing to consult with the local Sahrawi inhabitants prior to, during, or after conducting seismic surveys off the coast of Western Sahara, which it did on behalf of US-

based oil company Cosmos Energy.

The complaint also alleges the company repeatedly failed to respect the basic human rights and the right to self-determination of the Sahrawi people.

The complainants claim Morocco does not have the right to conduct or permit petroleum exploration in Western Sahara. The UN considers Western Sahara a non-autonomous territory in which natural resources should be managed in accordance with international law. If such activity takes place, it must be in accordance with the

needs and interests of the non-autonomous population.

Developments/Outcome

After an initial assessment, the Norwegian NCP accepted the complaint.

In response to the allegations, Fugro Geoteam stated in April 2010 that it had ceased

operations in the area until the political situation is resolved and that all raw seismic data had been transferred to Cosmos Energy.

Fugro-Geoteam's Dutch parent company, Fugro NV endorsed its subsidiary's statement and announced that it would

terminate its involvement in Western Sahara.

The complainants welcomed Fugro Geoteam's decision and have subsequently ended their campaign on the case. The NCP has not yet issued a final statement, and it is unclear if it will do so.

Case	Human rights issues at Goldcorp's gold mine in Guatemala		
Company/ies	Date filed	Status	Duration (to date)
Goldcorp Inc.	9 December 2009	Pending	11 months
Complainants	Coalition for the Defence of San Miguel Ixtahuacán (FREDEMI); The Center for International Environmental Law (CIEL)		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II		

Issue

A group of local Guatemalan communities filed a complaint against Canada-based Goldcorp Inc., which operates the Marlin gold mine, for failing to respect the human rights of the local population.

The complaint alleges four separate violations. First, Goldcorp's land acquisition violated communal property rights and the right to free, prior, and informed consent. Second, toxic contamination from the mine and the depletion of fresh drinking water violates their right to health, and similarly, overconsumption of water violates their right to water. Third, the use of explosives for blasting and heavy equipment has caused structural damage to many houses and violates the locals' right to property. Finally, retaliation against anti-mine

protesters violates their right to life and security of person.

The complainants specifically asked the Canadian NCP to examine the facts of the case and determine whether breaches of the Guidelines have occurred.

Developments/Outcome

After carrying out an initial assessment, the Canadian NCP declared the case admissible in March 2010 and offered to host meetings between the parties. The complainants replied they did not feel conditions existed for an open and constructive dialogue with Goldcorp. They declined the NCP's proposed terms for a closed-door meeting, stating that the meeting would create further tensions and division within the community.

Instead, they reiterated their request that the NCP conduct a

thorough examination of the facts, including a visit to the affected area, and issue a final statement with recommendations to ensure Goldcorp's compliance with the Guidelines.

In related developments, in May 2010 the Inter-American Commission on Human Rights, an independent body of the Organization of American States, recently called on the Guatemalan government to suspend mining activity at the Marlin mine and to take steps to protect the health of the surrounding communities. The following month, Guatemalan President Óscar Berger announced that he was suspending operations at the Marlin mine. The complainants have called on the Government to complete the administrative process in a timely fashion.

Case	Labour rights at Triumph's garment factories in Thailand and the Philippines		
Company/ies	Date filed	Status	Duration (to date)
Triumph International	3 December 2009	Pending	11 months
Complainants	BPMTI-Independent, Defend Job Philippines, Thai Labour Campaign, Triumph International Thailand Labour Union		
National Contact Point(s) concerned	Switzerland		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 9; Chapter IV, paragraphs 1a, 2a-c, 3; Chapter VII, paragraph 4		

Issue

A coalition of labour unions, NGOs and labour support groups filed a complaint against Swiss undergarment manufacturer Triumph International for carrying out massive layoffs without

consulting unions in Thailand and the Philippines.

In August 2009, nearly 2,000 workers were suddenly retrenched at the company's Thai factory, cutting the factory's workforce in half. In the

Philippines, 1,663 workers lost their jobs when the company closed two factories. In all three factories, the majority of the workers who were laid off were union members, including union leaders.

The complaint alleges that factory management repeatedly demonstrated anti-union behaviour and that the massive layoffs were management's retaliation in a long conflict with the unions. By not consulting the unions about the layoffs and failing to negotiate a social plan for the workers, the complainants contend Triumph has breached the OECD Guidelines.

The local unions' attempts to contact top management at the company' Swiss headquarters, including an invitation for direct

talks with Triumph CEO Markus Spiesshofer, were rejected.

Developments/Outcome

In February 2010, the Swiss NCP conducted an initial assessment and accepted the case as a specific instance. Currently the NCP is consulting with the parties to establish the terms for handling of the case.

In subsequent developments, Triumph relinquished tenancy of one of its factories in the Philippines to Food Terminal Inc. (FTI). In April 2010, FTI obtained

a temporary restraining order ordering the former Triumph workers to vacate their picket lines, while stating the workers' actions were unlawful, illegal, and embarrassing.

In response, the complainants have called on the Philippine government to stop the implementation of the restraining order. They also called on FTI and the Philippine government to support their call to operate the closed Triumph factory.



Case	Legal, environmental, consumer and disclosure issues at Vattenfall's coal plant in Germany		
Company/ies	Date filed	Status	Duration
Vattenfall AB	29 October 2009	Rejected 15 March 2010	5 months
Complainants	Greenpeace Germany		
National Contact Point(s) concerned	Germany		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 1, 5, 11; Chapter V, paragraphs 2a, 5, 6a, 8; Chapter VII, paragraph 4		

Issue

Greenpeace filed a complaint against Vattenfall AB, a Swedish government-owned electricity generating company, for undermining German environmental law and consumer protection issues.

The complaint alleges that Vattenfall's Hamburg-Moorburg coal-fired power plant, which is currently under construction, violates the OECD Guidelines on national environmental policies and consumer protection. Greenpeace alleges that Vattenfall is engaged in unreasonable lobbying and that it undermined German environmental law by filing a complaint with the World Bank's arbitration tribunal International Centre for Settlement of Investment Disputes (ICSID), in which the company demanded €1.4 billion in compensation from the German government because of the stringent environmental standards imposed on Moorburg.

Greenpeace states that despite the company's claims that it is committed to climate protection issues, Vattenfall generates the highest levels of CO₂ emissions per kilowatt-hour of any power company in Germany. In addition, the Moorburg plant is expected to use up nearly 10% of the German energy industry's CO₂ budget in its projected 40 years of operation while generating only 2% of the total amount of electricity produced in Germany. Greenpeace contends the plant's emissions will exceed levels necessary for sustainable development by more than five times.

The complaint also accuses Vattenfall of applying double standards, alleging that while Vattenfall is particularly committed to renewable energy sources in Sweden, the company concentrates on generating environmentally harmful coal energy in Germany.

Lastly, the complaint denounces Vattenfall's misleading policy of

disclosure during various malfunctions and accidents at the Krümmel nuclear power plant.

Developments/Outcome

The German NCP acknowledged receipt of the complaint and forwarded it to the company as part of its initial assessment.

In March 2010, the parallel proceedings before the ICSID were suspended, and the German NCP subsequently rejected Greenpeace's complaint, claiming that some of the allegations were not substantiated, some did not fall under the jurisdiction of the OECD Guidelines, and some were already being dealt with in the German courts.

After the OECD Guidelines complaint was rejected, the German government and Vattenfall reached an agreement in August 2010 regarding the Moorburg dispute, resulting in the termination of the ICSID proceedings.

Case	Forced evictions at NKG's coffee plantation in Uganda		
Company/ies	Date filed	Status	Duration (to date)
Neumann Kaffee Gruppe (NKG)	15 June 2009	Pending	16 months
Complainants	"Wake Up and Fight for Your Rights, Madudu Group" supported by FIAN		
National Contact Point(s) concerned	Germany		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 1, 2, 7		

Issue

The complainants filed a case against Neumann Kaffee Gruppe (NKG), because the Ugandan army forcefully evicted more than 2,000 people from their land to make way for the company's coffee plantation.

According to the complaint, the residents' land has been destroyed, forcing them to flee into the nearby forest, and no homes or other means of accommodation or compensation have been provided.

The complaint alleges NKG continues to produce coffee for export while the majority of the evictees have settled at the boarder of the plantation. They suffer from food shortages, lack of drinking water, inadequate health care, and a lack of money for school fees.

The evictees have asked NKG several times to support their struggle for compensation, but the company refuses to engage. The complainants also contend the company has tried to hinder a 2002 lawsuit filed by the evictees

against NKG and the Ugandan government.

Developments and Outcomes

After conducting an initial assessment, the German NCP declared the case admissible and forwarded it to NKG for a response. Currently, the parallel legal proceedings have hindered the NCP's ability to mediate between the parties. The case remains pending, and no substantial progress has been made.

Case	Corruption in Skanska's gas pipeline project in Argentina		
Company/ies	Date filed	Status	Duration
Skanska	20 May 2009	Closed November 2009	11 months
Skanska	September 2007	Closed November 2009	31 months
Complainants	Centre for Research and Prevention of Economic Crime (Centro de Investigación y Prevención de la Criminalidad Económica –CIPCE)		
National Contact Point(s) concerned	Argentina		
Guidelines Chapter(s) & paragraph(s)	Chapter VI, paragraphs 1, 2, 3; Chapter X		

Issue

Argentine NGO CIPCE filed a complaint against Swedish company Skanska for paying bribes to public servants during the construction of a gas pipeline in Argentina.

When the corruptions allegations were publicised, Skanska stated publicly it had dismissed the directors involved. However, Skanska provided the directors with severance pay before re-employing them as consultants in the company's various projects.

The complaint contends that Skanska's actions reveal the company's unwillingness to prevent and fight corruption. CIPCE argues the correct course of action would have been to dismiss those involved without

severance pay. Skanska argues they needed to find a quick solution.

Developments/Outcome

After the Argentine NCP accepted the case in November 2007, both parties agreed to negotiate a mutually acceptable solution, focusing in particular on the Guidelines' provision that states, "The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion. (Chapter VI, Paragraph 3)."

CIPCE asked the NCP to request that the OECD Investment Committee (IC) clarify the provision; however, the NCP rejected their request, arguing

that the IC does not have the ability to interpret the Guidelines.

In September 2008, Skanska withdrew from the process, and accused CIPCE of acting in bad faith and violating the rules of confidentiality.

In May 2009, CIPCE presented additional information in a second case against Skanska for alleged violations of Chapter VI. CIPCE requested that the NCP draft a final statement and close the case given Skansa's refusal to participate in the process.

In November 2009, the NCP issued a final statement, closing both cases without making an evaluation of the validity of the allegations.

Case	Cermaq ASA's salmon farming in Canada and Chile		
Company/ies	Date Filed	Status	Duration (to date)
Cermaq ASA	19 May 2009	Pending	17 months
Complainants	ForUM and Friends of the Earth Norway		
National Contact Point(s) concerned	Norway; Canada and Chile also consulted		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 7; Chapter IV paragraph 1a, d, 4; Chapter V, paragraph 2, 3, 4		

Issue

ForUM and Friends of the Earth Norway filed a complaint against Cermaq ASA for multiple breaches of the Guidelines arising from the fish farming and fish feed operations of the company's subsidiary Mainstream.

Cermaq ASA, headquartered in Norway, is one of the world's largest fish farming and fish feed companies. It is engaged in the breeding and distribution of salmon and trout in Norway, Scotland, Canada, and Chile. The Norwegian government is the majority shareholder in the company.

The complaint alleges that Cermaq ASA has not adequately

considered the rights of indigenous peoples in Canada and Chile whose access to resources is threatened by the company's salmon breeding.

The groups also contend that Cermaq has carried out unfounded dismissals, attempted to prevent free association of employees in labour unions, discriminated against women and implemented inadequate safety procedures for its employees.

Further, they allege Cermaq's activities pose an environmental threat through the spread of salmon lice and disease originating from the fish farms.

Developments/Outcome

As part of the initial assessment, the Norwegian NCP, which is taking the lead in handling the case, forwarded the complaint to the Chilean and Canadian NCPs for comment. Both NCPs provided comments.

The complainants provided the Norwegian NCP with additional evidence of the alleged breaches in Spanish, but the NCP concluded it could not process the information due to lack of translation resources.

In June 2010, the parties began a series of meetings with the NCP. No information concerning the outcome of these meetings has been made publically available.

Case	Intex Resources' nickel mine in the Philippines		
Company/ies	Date Filed	Status	Duration (to date)
Intex Resources	26 January 2009	Pending	21 months
Complainants	Framtiden i våre hender (Future in Our Hands)		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter II ; Chapter V, paragraphs 0-8 ; Chapter VI		

Issue

Framtiden i våre hender filed a complaint against Norway-based Intex Resources alleging the company's planned nickel mine and factory in the Mindoro Province of the Philippines will violate indigenous peoples' human and environmental rights.

The complaint contends the company's prospecting agreement overlaps with the Mangyan indigenous people's land, particularly the Alangan and Tadyawan tribes' land. The tribes have property rights in the area, but have not been consulted. In addition, the complaint alleges the factory threatens vital water resources because of its proximity to rivers that provide

water to neighbouring villages and agricultural fields.

Developments/Outcome

The Norwegian NCP forwarded the complaint to Intex Resources, and the company quickly responded in a public letter defending its operations. In March 2009, the NCP asked the complainants to comment on the company's response, and invited the parties to meet in the summer of 2009.

In related developments outside the NCP process, hunger strikes and protests by activists led to the withdrawal of the Environmental Compliance Certificate issued by the Philippine Government in

October 2009. In addition, the Norwegian ambassador to the Philippines and the embassy secretary visited the Mindoro province and held meetings with groups supporting and opposing the project in December 2009. A report of their visit was sent to the parties for comments.

The NCP accepted the complaint in March 2010 and decided to hire an independent expert to further investigate the case.

According to the NCP, the expert will visit Mindoro and establish a factual basis for the case. The Terms of reference for the fact finding mission have been agreed upon by both parties, but an expert has yet to be identified.

Case	Environmental and human rights issues in Vedanta's operations in India		
Company/ies	Date Filed	Status	Duration
Vedanta resources plc	19 December 2008	Concluded 25 September 2009	10 months
Complainants	Survival International		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraphs 2 and 7; Chapter V, paragraph 2b		

Issue

Survival International (SI) filed a complaint against British mining company Vedanta Resources because the company's aluminium refinery and planned bauxite mine on Niyam Dongar Mountain in Orissa, India will violate the rights of the Dongria Kondh tribe. The Niyam Dongar is a sacred mountain to the Dongria Kondh, which is one of the most isolated tribes in India. The tribe's culture, identity and livelihood are inextricably bound to the mountain.

The complaint alleges that neighbouring tribes have already felt the impact of Vedanta's presence. Some of them claim they have been forcibly evicted to make way for the aluminium refinery. Others may still have to vacate their homes as the plant expands and feeder roads, air strips, and toxic waste ponds are built.

The complaint also alleges the Dongria Kondh has not been consulted in the construction process and that the project will severely endanger the rights of these indigenous people. Moreover, there are fears that local streams and arable land will be polluted by air-borne particles from the mine, the road, and the conveyor belts that carry ore to the refinery.

SI contends that Vedanta, in refusing to accept that any

impacts exist, has failed to consider the "potential implications" of its activities for the Dongria Kondh.

Developments/Outcome

The UK NCP contacted Vedanta about the complaint, and the company responded by refuting all allegations. Vedanta also rejected the NCP's offer for mediation and refused to submit any evidence to substantiate its claims.

After conducting an investigation, the NCP published a final statement in September 2009 upholding SI's allegations that Vedanta acted in violation of the OECD Guidelines. Vedanta responded by stating "Vedanta refutes the conclusions [of the report] and has complied in all respects with Indian regulations including consultations with the local community".

In its final statement, the NCP also made recommendations to Vedanta to bring its business practices in line with the OECD Guidelines and requested that both parties provide an update on the implementation in three months.

In its three-month report Vedanta denied that there will be any displacement from the proposed mining project and reiterated that the mine is in compliance with Indian law. Vedanta also stated that its consultation

processes comply fully with Indian legal requirements and are already in line with the recommendations contained in the NCP's final statement.

SI's three-month report claimed that Vedanta had completely ignored the NCP's recommendations and deliberately frustrated SI's follow-up trip by hiring locals to threaten and intimidate SI employees and their guides. Further, SI reported that several NGOs and members of the Dongria Kondh stated that Vedanta had not initiated any discussion or contact with those affected by the project and has failed to alter its conduct in any way.

In March 2010, the UK NCP issued a follow-up statement urging Vedanta to immediately work with the Dongria Kondh people to explore alternatives to resettlement of the affected families. The NCP also recommended the company include a human rights impact assessment in its project management process and take concrete action to implement any self-regulatory practices it adopts.

Ultimately, the UK NCP could not compel Vedanta to comply or cooperate with the procedures and recommendations.

Case	SHV Holdings' involvement in human rights and environmental violations in Pakistan		
Company/ies	Date Filed	Status	Duration
SHV Holdings, NV	9 October 2008	Closed on 1 February 2010	19 months
Complainant	Shehri-Citizens for a Better Environment (Shehri-CBE)		
National Contact Point(s) concerned	Netherlands		
Guidelines Chapter(s) & paragraph(s)	Preface; Chapter II, paragraphs 1, 2, 6; Chapter V, paragraph 3		

Issue

Shehri-Citizens for a Better Environment's complaint against Dutch SHV Holdings NV alleges the company was involved in the illegal transfer and conversion of land and has committed human

rights abuses and caused environmental degradation in Pakistan.

Dutch SHV Holdings NV and Pakistani House of Habib jointly owned Makro Habib Pakistan

Ltd., which operates a chain of department outlet stores in Pakistan.

Developments/Outcome

The Dutch NCP accepted the case in November 2008 and

forwarded it to SHV for comment. In a February 2009 meeting with the NCP, SHV denied the allegations and informed the NCP it had divested from the Makro Habib joint venture in December 2008.

After the NCP learned that a lower court in Pakistan had dismissed a similar complaint concerning the land-related issues, the complainant argued that the case was dismissed unlawfully and an appeal had

been filed. In December 2009, the Supreme Court ruled in the complainant's favour and ordered Makro-Habib to relocate.

When the NCP learned that the environmental issues had been resolved prior to the filing of the complaint, the complainant acknowledged that the issues had been remedied, but requested that the NCP determine whether the OECD Guidelines had been violated.

Once the company presented documented proof that it had fully divested from Makro Habib Pakistan Ltd. in December 2008, the NCP concluded it could no longer pursue future-oriented mediation. The NCP also decided the "investment nexus" had ceased to exist and it therefore had no basis to continue the process.



Case	Shell-led consortium's environmental and human rights violations in Ireland		
Company/ies	Date Filed	Status	Duration
Royal Dutch Shell	22 August 2008	Closed on 30 July 2010	23 months
Marathon Oil	22 August 2008	Closed on 30 July 2010	23 months
Statoil	22 August 2008	Closed on 30 July 2010	23 months
Complainant	Pobal Chill Chomain Community, Kilcommon, Ballina, Co Mayo, Ireland		
National Contact Point(s) concerned	Ireland (lead), the Netherlands; United States and Norway also notified		
Guidelines Chapter(s) & paragraph(s)	Chapter II; Chapter V		

Issue

Pobal Chill Chomáin (People of Kilcommon) and two supporting NGOs filed a complaint concerning the Corrib gas project in North West County Mayo, Ireland run by a consortium of Shell E&P Ireland, Statoil Exploration Ireland, and Vermilion (which bought out Marathon Oil's share in 2009). The project includes a gas processing plant and a pipeline to transport untreated gas from the sea to the processing plant.

The complaint alleges the pipeline would pass too close to populated areas and go through an area prone to landslides, raising health and safety concerns. According to the complainants, given the instability of peat in some areas, there is an increased likelihood of pipeline failure.

The groups also point to environmental concerns. The location of the refinery poses a risk to the only source of potable water for 10,000 people in the region. Furthermore, the pipeline would pass through three ecologically sensitive areas and represents a threat to wildlife.

In addition, the groups allege the Corrib Gas project would violate many human rights espoused by the European Convention for the

protection of Human Rights and Fundamental Freedoms.

Developments/Outcome

The Irish NCP, in cooperation with the Dutch NCP, conducted an initial assessment, and both NCPs declared the case admissible. The Norwegian, US and later Canadian NCPs were informed about the process.

However, the process was put on hold while direct discussions between Shell and the complainants were being facilitated by the Irish government. When these talks collapsed in early April 2009, the Irish NCP held separate discussions with the parties.

In September 2009, the NCPs summarised their findings in writing and asked the parties to react by the end of November. The NCPs surmised that mediation would be extremely difficult given the irreconcilable positions on the main issue: relocation of the planned processing plant. Shell has refused to discuss relocation, claiming it received all necessary government permits for the plant. There was also significant disagreement as to whether the consortium engaged in sufficient consultations with the community.

In January 2010, the complainants agreed with the NCPs' assessment that mediation appeared impossible and requested that the NCPs close the procedure with a final statement.

The NCPs joint final statement focused on the issue of due diligence by the consortium, stating it was beyond its competence and mandate to draw conclusions on the validity of location of the processing facility.

The statement concluded that in the early stages of the project, dialogue with stakeholders had not been in accordance with the spirit of the Guidelines. However, since 2005, the consortium had improved its practices and shown willingness to address health and safety concerns. In response, the complainants expressed disappointment the NCPs had failed to consult with residents before coming to its conclusion.

The NCPs' statement also advised that in general, enterprises have a responsibility to respect the rights of people impacted by their activities. Companies are expected to exercise due diligence in the broad sense of the concept, and they have a responsibility to consider going beyond what is

legally required when it comes to consulting local communities.

The case is a positive example of collaboration among NCPs.



Case	Shell's environmental and human health violations in Argentina		
Company/ies	Date Filed	Status	Duration (to date)
Royal Dutch Shell	01 June 2008	Pending	28 months
Complainants	Citizen Forum of participation for Justice and Human Rights (FOCO - (Argentina), Friends of the Earth Argentina		
National Contact Point(s) concerned	Argentina (lead), Netherlands		
Guidelines Chapter(s) & paragraph(s)	Preface; Chapter II, paragraphs 1, 2, 5; Chapter III, paragraphs 1, 2, 4e, 5b; Chapter V, paragraphs 0-8.		

Issue

FOCO and Friends of the Earth Argentina filed a complaint against Royal Dutch Shell's Argentine subsidiary, Shell Capsa, for violating domestic law and ignoring the Argentinean government's sustainable development campaigns and policies. The complaint alleges the irresponsible actions at the company's oil refinery in the Dock Sud industrial area have put the health and safety of neighbouring residents in danger.

The affected community, called Villa Inflammable, is home to about 1,300 families who live in extreme poverty and lack access to basic sanitation, clean water and other essential utilities. Many of these problems stem from the socio-economic vulnerability of the inhabitants of the area. For decades, they have been living

with the toxic fumes produced by Shell Capsa's oil refinery.

The complaint notes that the refinery was closed for seven days in August 2007 after Argentina's national environmental authority found multiple violations to national environmental law.

Developments/Outcome

The case was filed simultaneously with the Argentine and the Dutch NCPs because the complainants believed the violations were a systemic problem in the global operations of the Shell.

Despite the existence of parallel legal proceedings, in September 2008 the Argentine and Dutch NCPs accepted the case (with the former taking the lead).

The Argentine NCP prepared a list of "considerations" from the complaint and asked the parties to respond; both complied. In

addition, in April 2009, three members of the NCP visited Villa Inflammable to interview residents and see the conditions.

However, Shell Capsa has refused to participate in the process or even recognize the NCP as the appropriate body for addressing the concerns raised in the complaint. Subsequently, in May 2009, the NCP indicated that it may have to close the case, but offered the parties the possibility of participating in a roundtable meeting outside the specific instance process. The complainants indicated that they would be open to such a meeting, but to date there has been no follow-up by the NCP.

In November 2009 the Argentine NCP announced it would close the case by publishing a report that describes its findings on the case, including the fact that the company refused to cooperate.



Case	South Korean companies' labour abuses in the Philippines			
Company/ies	Status	Date filed	Duration (to date)	
Chongwon Trading	Rejected	7 October 2007	3 September 2007	1 month
Il-Kyoung Co. Ltd.	Pending		3 September 2007	37 months
Complainants	Workers Assistance Center, Inc. (WAC), Korean House of International Solidarity (KHIS), Korean Confederation of Trade Unions (KCTU), Chongwon Union			
National Contact Point(s) concerned	South Korea			
Guidelines Chapter(s) & paragraph(s)	Chapter IV, paragraphs 1, 2,3,7; Chapter III, paragraph 4; Chapter I, paragraph 7; Chapter VI, paragraph 0			

Issue

Several groups filed complaints against Chongwon Trading and Il-Kyoung Co. Ltd. for labour rights violations.

The workers' rights problems started in when management threatened to close Chongwon's fashion plant in the Philippines in 2001 after workers attempted to establish a union. In 2004, after the unions won elections at the

Phils Jeon (a subsidiary of Il-Kyoung Co. Ltd.) and the Chongwon's plants, the company filed several unsuccessful court petitions challenging the results.

In August 2006, the union president at Phils Jeon was dismissed along with 63 other members. The following month, workers at Phils Jeon and Chongwon went on strike despite management's warnings. The

strike at Phils Jeon was violently dispersed by police and security guards who attacked and injured 25 mainly female workers. At Chongwon, 71 striking workers were dismissed and workers received death threats.

In February 2007, the Philippine Department of Labour and Employment suddenly declared the unions no longer represented the workers. The unions accused

the mediator for the National Relations Commission of taking bribes from the companies.

The complaint also notes in August 2007, two women workers sleeping in front of the Phils Jeon factory were attacked by masked men, abducted and then thrown out at a highway close to the Philippine Economic Zone Authority.

Developments/Outcome

After assessing the complaint, the Korean NCP rejected the Chongwon case, because the company no longer exists. However, the NCP did accept the Il-Kyoung/Phils Jeon case.

In November 2007 the complainants submitted additional field research at the

Phils Jeon factory at a meeting with the NCP. Il-Kyoung agreed to enter into a dialogue with the union. The complainants pushed to have the dialogue facilitated by the NCP.

In April 2008, an informal meeting took place between the union and Phils Jeon management (the NCP played no role). In that meeting, Phils Jeon management and Il-Kyoung stated that they would not enter into a dialogue with the workers, because they no longer work for the company. The complainants insisted that since the workers' dismissal is part of the dispute, they should maintain their union membership.

The NCP has organised two meetings with the complainants at their request. However, no

meetings with all the parties has been organised by the NCP despite the complainants' request.

In April 2009, after the complainants asked a progress report on case, the NCP responded that it would take no further action on the case until parallel legal proceedings (a case between Phils Jeon and its employees) in the Philippines had concluded.

The complainants do not believe the Korean NCP intends to resolve or conclude the case; however, after pressure from NGOs, officials have stated they reviewed the case again and would like to find a better way to proceed.



Case	DLH's purchase of illegal timber from conflict zones		
Company/ies	Status	Date filed	Duration (to date)
Dalhoff, Larsen & Hornemann (DLH)	Closed: February 2010	10 March 2006	50 months
Complainants	Nepenthes		
National Contact Point(s) concerned	Denmark		
Guidelines Chapter(s) & paragraph(s)	Preface, point 1; Chapter V, paragraph 1; Chapter II, paragraphs 1, 10, 2; Chapter IV, paragraph 1; Chapter IX		

Issue

Nepenthes filed a complaint against Dalhoff, Larsen & Hornemann (DLH) for helping to fuel violent conflict, human rights abuses and forest crimes by buying timber from countries with a high rate of illegal logging.

The complaint states that DLH buys timber from Burma and parts of Africa, where the timber industry is known to be involved in violent conflicts. Some of DLH's suppliers have also been convicted of forest crimes, and DLH has been caught buying illegal timber several times.

According to the complainant, DLH does not verify whether the timber it buys is legal, and as a result, the company ignores the fact that its timber purchases could perpetuate violent conflicts and human rights violations.

Developments/Outcome

The Danish NCP began working on the case after the Danish Government developed a draft position on "sustainable" and "legal" timber in Spring 2007. The NCP held three meetings: two with each of the parties and one joint meeting.

In March 2009, Nepenthes stated an independent evaluation of DLH's operating methods was required; however, the company responded that an evaluation was unnecessary.

In February 2010, the NCP closed the case, claiming it could not force DLH to conduct an evaluation. The NCP was not able to evaluate the case and could not decide whether DLH acted in violation of the Guidelines. DLH has, however, developed some

internal procedures that may suggest the company will strive to act in accordance with the Guidelines.

In parallel developments, Nepenthes (which owns one share in DLH) proposed at the company's 2007 annual shareholder meeting that it should conduct its business in accordance with the Guidelines. Shareholders rejected the proposal and instead adopted a board proposal stating DLH will "aim at" conducting business in a way that is in accordance with the Guidelines. Nepenthes requested that DLH provide information about the quantity and origin of its timber purchased and relevant certifications, but the company refused.

Case	British companies refusal to adhere to UK Export Credit Program's anti-corruption measures		
Company/ies	Status	Date filed	Duration (to date)
Rolls Royce	Pending	1 April 2005	66 months
BAE Systems	Pending	1 April 2005	66 months
Airbus S.A.S.	Pending	1 April 2005	66 months
Complainants	Corner House		
National Contact Point(s) concerned	U.K., France,		
Guidelines Chapter(s) & paragraph(s)	Chapter VI		

Issue

The Corner House filed a complaint against BAE Systems, Rolls Royce, and Airbus after the companies refused to adhere to the UK's Export Credit Guarantee Department's (ECGD) new anti-corruption measures.

The complaint notes that in 2004, ECGD introduced new anti-corruption measures that required companies to provide information about the agents they use in ECGD-backed transactions, including how much they are paid in commission. The department was established to combat bribery and corruption in international business practices, and its policies were to apply to

all companies receiving loans or guarantees.

The companies refused, claiming the information was confidential. Despite assurances the information would remain safe, the companies continued to rebuff ECGD. In the end, the companies were assured by the ECGD that the new policy would not apply to them.

Developments/Outcome

The UK NCP accepted the complaint in May 2005, and forwarded it to the companies for comment. The case was put on hold pending the outcome of a public consultation initiated by ECGD on its anti-corruption measures.

The complaint against Airbus was referred to the French NCP, but action was suspended because ECGD allegedly engaged in consultation about payments through agents.

In September 2009, the UK NCP wrote to the Corner House, apologising that the case had apparently been lost by the NCP due to staff changes. The NCP stated that it had only become aware of the case after reviewing OECD Watch's June 2009 submission to the OECD, which noted the case as "blocked".

The case has now been reactivated, and the NCP is drafting its final statement.

Case	Toyota's anti-trade union practices in the Philippines		
Company/ies	Status	Date filed	Duration (to date)
Toyota Motor Corporation	Blocked	04 March 2004	79 months
Complainants	Toyota Motor Philippines Corporation Workers' Association (TMPCWA), Support Group for TMPCWA in Japan		
National Contact Point(s) concerned	Japan		
Guidelines Chapter(s) & paragraph(s)	Chapter IV , paragraphs 1, 6, 7, 8; Chapter II, paragraph 2		

Issue

TMPCWA filed a complaint against Toyota Motor Philippines Corporation (TMP) for labour rights violations. The complaint alleges TMP refused to recognize TMPCWA as the sole and exclusive bargaining agent, and the company has actively tried to hinder workers' right to association and collective bargaining.

In addition, TMP refused to organize "Certification Elections", as required by law. When elections were eventually held in March 2000, TMP challenged the favourable results for TMPCWA.

In March 2001, Philippine authorities reaffirmed TMPCWA's legitimacy. On the same day, 227 leaders and members (who had participated in the previous month's gathering) were unjustifiably dismissed.

Developments/Outcome

In September 2004, six months after the case was filed, the Japanese NCP announced it was still conducting an initial assessment and that in its opinion the case of TMPCWA is still at bar at Court of Appeals. The NCP again stated it was still conducting an initial assessment in 2007 after facing criticism in OECD meetings and by an

International Solidarity Campaign.

Meanwhile, TMPCWA and supporting groups have met with Toyota regularly every year at Toyota's headquarters in Tokyo and Toyota City; however, there has been no progress on the issues raised in the complaint.

Although the complainants consider the case "blocked", in October 2009 they received informal word the Japanese NCP was planning to (re)start the initial assessment on the case. The complainants sent a letter urging the NCP to start this assessment without further delay.



Case	BTC oil pipeline in Azerbaijan, Georgia & Turkey		
Company/ies	Status	Date Filed	Duration (to date)
BP plc	Pending	29 March 2003	90 months
Conoco Philips	Pending	29 March 2003	90 months
Delta Hess	Pending	29 March 2003	90 months
ENI	Pending	29 March 2003	90 months
TotalFinaElf	Rejected in 2006	29 March 2003	90 months
Unocal	Pending	29 March 2003	90 months
ING Belgium	Blocked	9 May 2004	77 months
Dexia Bank	Blocked	9 May 2004	77 months
KBC Bank NV	Blocked	9 May 2004	77 months
Complainants	Campagna per la Riforma della Banca Mondiale, FERN, Amis de la Terre, Friends of the Earth US, Milieudefensie, PLATFORM, Urgewald e.V., WEED, Germanwatch, BUND, Friends of the Earth England, Wales and Northern Ireland, The Corner House, Proyecto Gato		
National Contact Point(s) concerned	United Kingdom, Italy, France, Germany, United States, Belgium		
Guidelines Chapter(s) & paragraph(s)	Chapter I, paragraph 7; Chapter II, paragraph 5; Chapter V, paragraphs 1,2,4; Chapter III, paragraph 1		

Issue

The BTC consortium of 10 oil companies, led by BP, is accused of seeking tax and law exemptions and undue influencing of governments in the construction of a 1,760 kilometre pipeline through Azerbaijan, Georgia, and Turkey. The complaint was filed simultaneously with the UK, Germany, Italy, and US NCPs. The complaint also raised concerns about BP's failure to adequately consult with project-affected communities and failure to contribute to the goals of sustainable development.

At the time the complaint was filed, the BTC consortium was seeking the political and financial support of their countries' export credit agencies, the European Bank for Reconstruction and Development and the International Finance Corporation of the World Bank Group.

A second complaint, filed by Proyecto Gato at the Belgian NCP, alleges that the Belgian banks ING, Dexia, and KBC, in supporting the BTC project financially, are impeding economic, social, and environmental progress in the host countries. Proyecto Gato maintains that the banks did not conduct adequate due diligence on the environment, health and security impacts of the pipeline. In addition, the banks allegedly did not supervise or control the projects' progress with respect to the implementation of environmental and social objectives in order to promote sustainable development.

Developments/Outcome

Although the case was accepted by the UK NCP in August 2003, BP only responded in detail in March 2004, denying that the project violated the Guidelines.

In October 2004, NGOs sent a letter to the NCP, expressing concern that the UK Export Credit Guarantee department (ECGD) has decided to support the project before the NCP adjudicated on the Complaint.

The NCP only visited the affected region in September 2005 and a dialogue session was held in October 2005.

However, in January 2006, BP broke off the dialogue process. The company also refused to disclose to the complainants its written response to the issues raised by the villagers during the NCP's field visit. Nevertheless, the NCP issued a Final Statement in August 2007, which relied heavily on BP's undisclosed response to the field visit. The Final Statement exonerated the company.

The complainants appealed to the UK's newly established NCP Steering Board arguing that the NCP's statement was unfair and that it failed to "make any serious attempts to engage critically with the issues." In December 2007, the NCP acknowledged the procedural failures and withdrew its Final Statement.

In July 2008, the Steering Board conducted the first ever review of the NCP's handling of a Specific

Instance. A summary of the Review Committee's findings were made public in September 2008. Following the Steering Board's review, BP agreed to share its previously undisclosed response with the complainants. However, the company still refused to disclose the report to the complainant's main partner in Turkey and the issue was only resolved after the arranged mediation between the parties. The UK NCP is now composing a draft statement for the parties involved to comment on. A Final Statement is expected later in 2010.

In subsequent developments, in February 2009, the complainants submitted a paper on "General Lessons" that could be learned from the NCP's handling of the complaint. The Steering Board of the UK NCP has provided two reactions to the "lessons learned" paper that the complainants submitted.

Because the lead company in the BTC consortium, BP, is British, the NCPs in the countries where the Specific Instance was submitted collectively decided in 2004 that the UK would "take the lead" in handling the case. However, despite this understanding, the UK NCP decided unilaterally in 2005 that it would only deal with the UK complainants. This decision was apparently not communicated by the UK to the other NCPs until January 2006. The UK NCP consistently failed to keep its NCP colleagues informed of its handling of the Specific Instance. The French NCP rejected the

case against TotalFinaElf, but no further progress on the cases filed against this or the US companies has been made.

In the ENI case, the Italian NCP finally agreed in January 2008 to conduct an initial assessment of the case against consortium partner ENI. The NCP hosted a meeting between the parties, and ENI agreed to submit a written response to some of the issues raised in the complaint. After an exchange of views and a disagreement about the

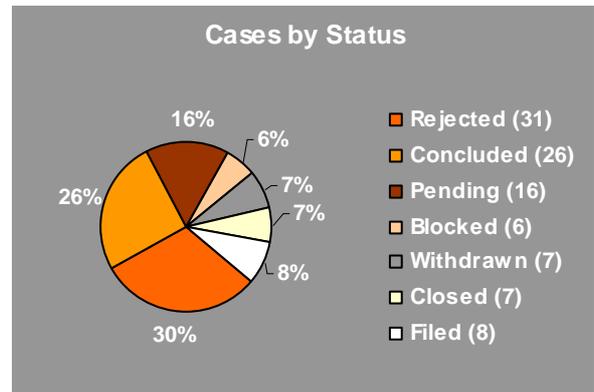
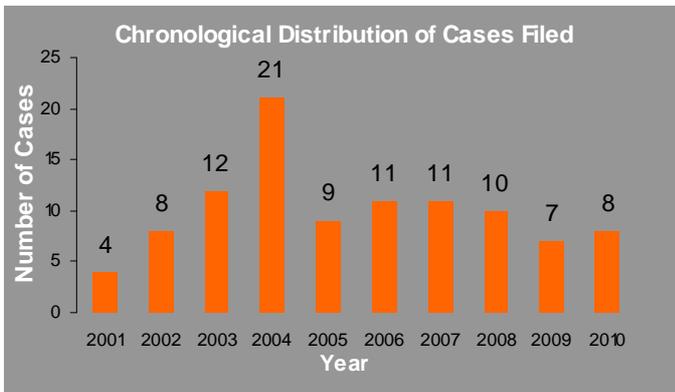
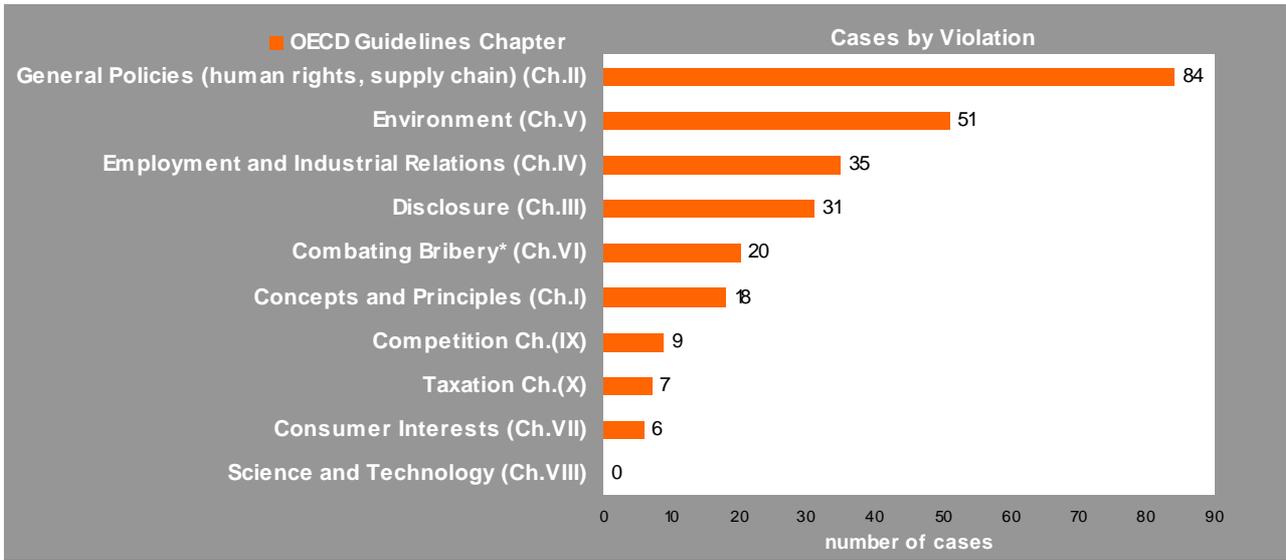
interpretation of the Guidelines, the complainants asked the NCP to seek clarification from the Investment Committee. The NCP still has to do so. The clarification is around the use of stabilization clauses, such as those included in the host government agreements ruling the project are in compliance or not with the Guidelines. This request and following ENI's submission was moved by the complainants as preliminary to the instruction of the case by the NCP and the case remains at the point of dealing

with procedural issues, rather than with the substance.

The French and German NCPs have now rejected the case. The Belgian NCP declared the complainants against the Belgian banks eligible, but because BP is the main actor in the BTC project it has forwarded the cases to the British NCP, thereby closing the case in Belgium. However, the British NCP unofficially declared that it would not evaluate the role of the Belgian banks and the cases remain in limbo.

Current case statistics

As of November 2010, 101 OECD Guidelines cases have been filed by NGOs



* It should be noted that Transparency International - Germany's complaint against 57 companies should technically be considered 57 separate cases, but has here only been counted as 1 case. Considering it as 57 separate cases would add an additional 56 cases to the Bribery Chapter (VI), the year 2007 and the "Rejected" status.



This Quarterly Case Update has been compiled by Joseph Wilde-Ramsing, Virginia Sandjojo, and Sarka Halas, Centre for Research on Multinational Corporations (SOMO). Edited by Colleen Freeman.

The Quarterly Case Update is produced four times a year and aims to document the views and experiences of NGOs involved in NCP/OECD Guidelines procedures. OECD Watch strives to ensure that the information in this case update is accurate, but ultimately OECD Watch is not responsible for the content. OECD Watch is willing to correct or remove any information that is factually inaccurate. For more specific information about the cases in this update, please visit www.oecdwatch.org or contact the parties involved directly.

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